

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

M. SHANKEN COMMUNICATIONS, INC.,

Plaintiff,

– against –

CIGAR500.COM INC., ANTHONY
MASCIANGELO, AND MONIQUE
MASCIANGELO,

Defendants.

07-Civ.-7371 (JGK)

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO WITHDRAW

Orrick, Herrington & Sutcliffe LLP (“Orrick”), which has served as counsel for Cigar500.com Inc., Anthony Masciangelo, and Monique Masciangelo (collectively, the “Defendants”) since the commencement of this action in August 2007, submits this memorandum in support of its motion for leave to withdraw as counsel for the Defendants.

As set forth in the accompanying Declaration of Lisa T. Simpson dated March 4, 2008 (the “Simpson Decl.”), the Defendants have advised that they no longer wish to retain Orrick as legal counsel in this matter and have further advised that Anthony and Monique Masciangelo wish to represent themselves and Cigar500.com Inc. *pro se*, if permitted, going forward. (Simpson Decl. ¶ 3). Further, Defendants do not wish to and cannot afford to incur further legal expenses on this matter and have accounts receivable owing to Orrick from 2007. (Simpson Decl. ¶ 5). As a result, Orrick and the Defendants have mutually agreed that Orrick shall withdraw as counsel. (*Id.*).

Under Rule 1.4 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York:

An attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the court and may not withdraw from a case without leave of the court granted by order. Such an order may be granted only upon a showing by affidavit or otherwise of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the calendar.

Defendants' decision to proceed *pro se* in this matter and their failure to pay past legal fees are satisfactory reasons for the Court to grant Orrick's withdrawal. *See Young Am. Merch. Corp. v. Top Quality Prods., Inc.*, 02 Civ. 5962 (CBM), 2004 U.S. Dist. LEXIS 5748, at *3 (S.D.N.Y. Apr. 6, 2004) (allowing withdrawal of attorney under Local Civil Rule 1.4 and 22 NY Comp Codes 1200.15(b)(4), which mandates that an attorney withdraw when discharged by the client); *Allstate Ins. Co. v. Nandi*, 258 F. Supp. 2d 309, 311 (S.D.N.Y. 2003) (same); *Team Obsolete Ltd. v. A.H.R.M.A. Ltd.*, 464 F. Supp. 2d 164, 165 (S.D.N.Y. 2006) (allowing withdrawal of attorney under, *inter alia*, Local Civil Rule 1.4 and 22 NY Comp Codes 1200.15(c)(5), which permits withdrawal when the lawyer's client "knowingly and freely assents to termination of the employment."). *See also Promotica of America, Inc. v. Johnson Grossfield, Inc.*, 98 Civ. 7474 (AJP), 2000 WL 424184, at *1 (S.D.N.Y. Apr. 18, 2000) ("It is well-settled that nonpayment of fees is a valid basis for the Court to grant counsel's motion to withdraw, especially when the motion is not opposed.") (internal citation omitted); *D.E.A.R. Cinestudi S.P.A. v. Int'l Media Films, Inc.*, 03 Civ. 3038 (RMB), 2006 WL 1676485, at *1 (S.D.N.Y. Jun. 16, 2006) (same); *HCC, Inc. v. R H & M Mach. Co.*, 96 Civ. 4920 (PKL), 1998 WL 411313, at *1 (S.D.N.Y. Jul. 20, 1998) (same).

Defendants will not be prejudiced by Orrick's withdrawal. Plaintiff M. Shanken Communications, Inc. (the "Plaintiff") filed its complaint against the Defendants on August 17, 2007. Defendants filed their Motion to Dismiss the complaint on January 11, 2008. Plaintiff filed its opposition to the Motion to Dismiss on February 22, 2008. A reply, if one is to be filed,

is due on or before March 7, 2008. However, Defendants have instructed Orrick that they do not wish for Orrick to prepare any papers on Reply. (Simpson Decl. ¶ 3). Discovery has not yet commenced in this proceeding. (Simpson Decl. ¶ 6).

Orrick therefore respectfully requests that the Court enter an order permitting Orrick to withdraw from its representation of the Defendants in this action.

Dated: New York, New York
March 4, 2008

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: 
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